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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

****

UNITED STATES OF AMERICA,	*	CR 05-30031
Plaintiff,	*	
-vs-	*	OPINION AND ORDER
TROY JULIAN LAROCHE,	*	
Defendant.	*	

****

Defendant filed a motion for suppression of evidence, Doc. 27. U.S. Magistrate Judge Moreno conducted an evidentiary hearing on September 2, 2005, and filed and served a report and recommendation for disposition of the motion, Doc. 42. The Court has conducted a *de novo* review of the transcript of the hearing, Doc. 44, the transcript of the findings made on the record by the magistrate, Doc. 45, and all the files and records herein. Defendant has filed objections, Doc. 47, to the recommendation of the magistrate and said objections have been considered as well.

Although this is a very close case, the defendant's objections should be overruled. The tribal officer had the requisite reasonable suspicion to stop and investigate further. If defendant had remained where he was, he would have had no problem. The fact that the defendant walked off at a fast pace when the officer approached the vehicle, and was reluctant to return to the officer further added to this suspicion. The search of the defendant's coat after he abandoned it was likewise permissible. *See* California v. Hodari, 499 U.S. 621 (1991). The Court, therefore, agrees with the findings made by the magistrate and his recommendation.

Now, therefore, in light of the foregoing,

IT IS ORDERED:

(1) That the motion for suppression of evidence, Doc. 27, is denied.

(2) That the defendant's objections to the magistrate's report and recommendation, Doc. 47, should be and are hereby overruled and that the recommendation and findings made by the magistrate, Docs. 44 and 45, should be and are hereby adopted.

Dated this 30th day of September, 2005.

BY THE COURT:

Charles B. Kornmann

CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: Susan Ter DEPUTY

(SEAL)